Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _31 October 2003_.

2a)☐ This action is **FINAL.**   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-24_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-24_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _6/13/05_.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____ .

DETAILED ACTION

Claim Rejections - 35 USC § 112

1.   Claims 6, 10 and 16 contain the trademark/trade name Microsoft Exchange.

Where a trademark or trade name is used in a claim as a limitation to identify or

describe a particular material or product, the claim does not comply with the

requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218

USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade

name cannot be used properly to identify any particular material or product. A

trademark or trade name is used to identify a source of goods, and not the goods

themselves. Thus, a trademark or trade name does not identify or describe the goods

associated with the trademark or trade name. In the present case, the trademark/trade

name is used to identify/describe an email server and, accordingly, the

identification/description is indefinite.

Claim Rejections - 35 USC § 102

2.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3.   Claims 1-3, 11-13 and 19-21 are rejected under 35 U.S.C. 102(b) as being

anticipated by Veritas' Backup Exec for Windows NT® and Windows® 2000

Administrator's Guide.

4.   As per claim 1, the guide describes a method comprising:

Storing one or more messages on a mail server, wherein each message is

associated with an index time [The Microsoft Exchange server the guide is directed to is

used for e-mail purposes (Page 615, First Bullet). One of ordinary skill in the art would

have found it obvious that such messages are associated with an index time];

Performing a full backup by storing each message on a backup medium (Page

619, 5th Bullet);

Storing a backup time associated with the full backup [The guide discloses an

incremental backup which includes all incremental backups done since the last full

backup, thus a backup time is associated with the full backup (Page 619, 7th Bullet)];

Storing one or more additional messages on the mail server, wherein each

additional message is associated with an index time (Page 619, 7th Bullet);

performing a partial backup by storing selected messages on the backup medium

dependent upon a difference between the index time associated with each message

and the backup time (Page 619, 7th Bullet).

5.   As per claim 2, the guide describes the method of claim 1, wherein the partial

backup is performed by backing up each message that includes an index time that is

dated after the backup time (Page 619, 7th Paragraph).

6.   As per claim 3, the guide describes the method of claim 1, wherein each

message on the mail server is contained in a mail folder object [the guide describes that

messages, mailboxes, or folders can be selected for backup. A person of ordinary skill

in the art understands the mailbox tree has messages within the folders. (Page 625, 1st

Paragraph)].

7.   As per claim 11-13 and 19-21 please see rejection of claims 1-3 above.

8.   Claims 7-8, 17-18 and 23-24 are rejected under 35 U.S.C. 102(e) as being

anticipated by Beattie (US PG Pub 2003/0200480).

9.   As per claim 7, Beattie discloses a method comprising:

performing a full backup (Page 4, Paragraph 39) of a mail folder object on a mail server

(Page 4, Paragraph 38), wherein performing a

        full backup comprises:

        storing a time the full backup begins as a backup time in the mail folder object

[The system of Beattie stores incremental timestamps from the time a full backup is

performed, thus the full backup time is also stored. The timestamps are stored in folders

for each backup of data, thus these are the mail folder objects (Page 5, Paragraph 45;

Figure 2B)]

transferring one or more messages in the mail folder object dated before the

backup time to a backup medium [It is obvious that the data transferred to the backup

system is dated before the backup time, as future data does not exist at time of backup

(Page 4, Paragraph 39)];

performing a partial backup (Page 2, Paragraph 26) of the mail folder object (Page 4,

Paragraph 38), wherein performing the

partial backup comprises:

storing a time the partial backup begins as a partial backup time (Page 5,

Paragraph 46), and

transferring one or more messages in the mail folder object dated before the

partial backup time and dated after the backup time to the backup medium [An

incremental change is described as data that has changed since the last full backup, It

is obvious that the data transferred to the backup system is dated before the backup

time, as future data does not exist at time of backup (Page 2, Paragraph 46)].

10.   As per claim 8, Beattie discloses the method of claim 7, wherein performing a

partial backup further comprises storing the partial backup time as the backup time in

the mail folder object [The timestamps are stored in folders for each backup of data,

thus these are the mail folder objects (Fig 2b, Page 5, Paragraph 46)].

11.   As per claim 17, Beattie discloses a system comprising:

A mail server operable to store one or more messages in a mail folder object

(Page 4, Paragraph 38);

A backup medium (Fig 1, Ref 112);

a backup application, wherein said backup application is operable to perform a

full backup on the mail folder object (Page 4, Paragraph 39), wherein performing

a full backup comprises:

storing a time the full backup begins as a backup time in the mail folder

object [The system of Beattie stores incremental timestamps from

the time a full backup is performed, thus the full backup time is also

stored. The timestamps are stored in folders for each backup of

data, thus these are the mail folder objects (Page 5, Paragraph 45;

Figure 2B)], and

transferring one or more messages in the mail folder object dated before

the backup time to the backup medium [An incremental change is

described as data that has changed since the last full backup, It is

obvious that the data transferred to the backup system is dated

before the backup time, as future data does not exist at time of

backup (Page 2, Paragraph 46)]; and

wherein said backup application is further operable to perform a partial backup of

the mail folder object (Page 2, Paragraph 26), wherein performing the partial

backup comprises:

storing a time the partial backup begins as a partial backup time (Page 5,

Paragraph 46), and

transferring one or more messages in the mail folder object dated before

the partial backup time and dated after the backup time to the

backup medium [An incremental change is described as data that

has changed since the last full backup, It is obvious that the data

transferred to the backup system is dated before the backup time,

as future data does not exist at time of backup (Page 2, Paragraph

46)].

12.   As per claim 18, Beattie discloses the system of claim 17, wherein performing a

partial backup further comprises storing the partial backup time as the backup time in

the mail folder object [The timestamps are stored in folders for each backup of data,

thus these are the mail folder objects (Fig 2b, Page 5, Paragraph 46)].

13.   As per claims 23-24, please see rejections of claims 17-18 above.

Claim Rejections - 35 USC § 103

14.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

15.   The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating obviousness or nonobviousness.

16.   Claims 4-6, 14-16 and 22 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Backup Exec Administrator's Guide as applied to claims 3 and 13

above, and further in view of Microsoft Exchange Property Tags Listing.

        As per claim 4, the guide describes the method of claim 3. The guide does not

discuss the method wherein storing the backup time comprises modifying a data

member of the mail folder object wherein the data member is a defined parameter of the

mail folder object.

Microsoft Exchange provides a listing of property tags which are stored with their objects. The PR_LAST_FULL_BACKUP property is used to store the time of the object's last full backup.

As per claim 5, the combination of the Backup Exec Administrator's Guide and Microsoft Exchange Property Tags disclose the method of claim 4, wherein the data member is defined by a manufacturer of the mail server [PR_LAST_FULL_BACKUP is a property defined by Microsoft, the manufacturer of exchange].

As per claim 6, the combination of the Backup Exec Administrator's Guide and Microsoft Exchange Property Tags disclose the method of claim 4, wherein the mail server is a Microsoft Exchange server, and wherein the data member is a PR_LAST_FULL_BACKUP property [See Microsoft Exchange Property Tags listing].

As per claims 14-16, please see rejections of claims 4-6 above.

As per claim 22, please see rejection of claim 4 above

Regarding claims 4-6, 14-16 and 22, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate using the PR_LAST_FULL_BACKUP property of exchange into the system of Backup Exec, since

Backup Exec is used to backup Exchange databases, and this would allow for simple recording of backup time by the system.

17.   Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beattie as applied to claim 7 above, and further in view of Microsoft Exchange Property Tags Listing.

As per claim 9, Beattie describes the method of claim 8. Beattie does not discuss the method wherein storing the backup time comprises modifying a data member of the mail folder object wherein the data member is a defined parameter of the mail folder object.

Microsoft Exchange provides a listing of property tags which are stored with their objects. The PR_LAST_FULL_BACKUP property is used to store the time of the object's last full backup [Since all the incremental backups along with the original full backup create the current full backup, this would be the property used to store the backup time].

As per claim 10, the combination of Beattie and Microsoft Exchange Property Tags disclose the method of claim 9, wherein the mail server is a Microsoft Exchange server, and wherein the data member is a PR_LAST_FULL_BACKUP property [See Microsoft Exchange Property Tags listing].

Regarding claims 9-10, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate using the PR_LAST_FULL_BACKUP property of exchange into the system of Beattie, since Beattie discloses a system for backup of Exchange databases, and this would allow for simple recording of backup time by the system.

Conclusion

18.   The following is text cited from 37 CFR 1.111(c): In amending in reply to a rejection of claims in an application or patent under reexamination, the applicant or patent owner must clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. The applicant or patent owner must also show how the amendments avoid such references or objections.

19.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

20.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leonid Kravets whose telephone number is 571-272-2706. The examiner can normally be reached on M-F, 8-4:30.

21.   If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Kim can be reached at 571-272-4182. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

22.   Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

L. R

Leonid Kravets
Patent Examiner
Art Unit 2189

BEHZAD JAMES PEIKARI
PRIMARY EXAMINER

November 1, 2005